

Borden, Inc. and United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 540. Case 16-CA-17467

September 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed on July 3, 1995, the General Counsel of the National Labor Relations Board issued a complaint on July 19, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 16-RC-9768. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 14, 1995, the General Counsel filed a Motion for Summary Judgment. On August 17, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 31, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, the Respondent asserts several defenses with respect to the Union's information request on the grounds of burdensomeness, overbreadth, vagueness, relevance, confidentiality, and harassment.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, and as the Respondent admits its refusal to bargain with the Union, we grant the Motion for

Summary Judgment with respect to those allegations of the complaint relating to the Respondent's refusal to honor the Union's certification and to bargain with the Union.

However, we find that there are material issues of fact with respect to the allegations in the complaint relating to the Respondent's refusal to provide information requested by the Union.¹ In its answer and re-

¹The complaint alleges that by letter dated June 16, 1995, the Union requested the following information from the Respondent:

1. Individual rates of pay and classification for each bargaining unit employee;
2. Copies of Company rules, regulations and attendance policies applicable to bargaining unit employees;
3. Copy of job and crewing standards;
4. Copy of job and evaluation systems;
5. Copy of employee insurance plan and cents per hour cost to the Company and/or employees. If the plan provides for family coverage and single coverage, the appropriate cents per hour cost for each. A breakdown of how many employees have family coverage and single coverage;
6. Copy of employee retirement plan, profit sharing, 401k plan and the cents per hour cost to the Company and/or employee for each plan;
7. A list of paid Holidays and the [n]umber of hours employees are compensated for each Holiday;
8. A total breakdown of all job classifications and job descriptions, along with the rates of pay for each job;
9. Starting rates of pay for new hires and the progression schedule for wage increases;
10. A total description on the method of resolving employee grievances and/or complaints;
11. A total description on the method of earning paid vacation time, up to the maximum;
12. A total description of any formula or methods used to prorate paid vacation time;
13. A total description of Company policies regarding any unpaid leave of absence from work;
14. Total annual expense for FICA and unemployment compensation for 1994 and year to date for 1995;
15. Total number of overtime hours worked by employees in 1994 and year to date in 1995;
16. Total expense for all overtime hours paid to employees in 1994 and year to date in 1995;
17. Most current list of names, addresses and phone numbers of all bargaining unit employees;
18. A total breakdown of sex and age of each bargaining unit employee;
19. The number of paid relief periods issued to employees in a normal scheduled worked day and the duration of such relief period;
20. The method of the distribution of overtime opportunities within a work group or department when the entire group is not required to work the overtime;
21. The Company policy regarding equipment, tools and clothing issued to employees and the laundry for such clothing and the party responsible for the cost;
22. The method of determining a work week for payroll purposes. (The beginning and ending of a work week);
23. The number of layoffs and the number of bargaining unit employees affected by each layoff in 1994 and year to date in 1995;
24. The current scheduled start times for all bargaining unit shifts and night premium pay qualification;

sponse to the Notice to Show Cause, the Respondent contends that it does not keep some of the information requested by the Union and it would be unduly burdensome to compile it (Nos. 5 & 6); that many of the Union's information requests are overbroad to the extent they are not limited to bargaining unit employees (Nos. 7, 8, 9, 14, 15, 16, 29, and 31); that several of the information requests are vague (Nos. 3, 4, and 32) or seek information which is confidential (No. 31) or not presumptively relevant (No. 33); and that it is excused from providing the information requested because the Union's request is not designed to seek information necessary to bargain in good faith, but to harass the Respondent. The Respondent asserts that it made known its foregoing objections to the Union in a supplemental response dated August 21, 1995, a copy of which is attached to the Respondent's response to the Notice to Show Cause, in which it stated that certain of the information would be provided, requested clarification with respect to certain of the information requests, and explained its objections to the information requests. In these circumstances, where there appear to be material issues of fact as to whether the Respondent has unlawfully refused to provide the Union with some or all of the information requested, we shall deny the General Counsel's Motion for Summary Judgment with respect to the information allegations, and remand those allegations for further appropriate action.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a New Jersey corporation with an office and place of business in Sulphur Springs, Texas, has been engaged in the business of producing and selling dairy products.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received for use at its Sulphur Springs, Texas facility, goods valued in excess

25. The Company policy regarding pay for Holiday work and Saturday and Sunday work or scheduled days off in lieu of Saturday or Sunday;

26. The current method for promotions to higher paying jobs, shift preference, vacation preference, layoffs and job transfers;

27. Total number of straight time hours worked by the bargaining unit in 1994 and year to date in 1995;

28. Updated seniority list;

29. Number of weeks vacation each employee is eligible to receive year to date;

30. OSHA 200 logs;

31. Individual copies of employees disciplinary records;

32. Declaration of all past practices not covered in employee handbook or employee benefits booklets;

33. Annual income statements and balance sheets for the last three (3) fiscal years, beginning with the most current.

² See *People Care, Inc.*, 314 NLRB 1188 (1994).

of \$50,000 directly from suppliers located outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 8, 1995, the Union was certified on June 13, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All production workers, maintenance, vault and warehouse employees employed by Borden, Inc., at its facility located at 500 N. Jackson St., Sulphur Springs, Texas.

EXCLUDED: All supervisors, guards, office clerks, lab employees, and confidential employees as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About June 16, 1995, by letter, the Union requested the Respondent to bargain,³ and since June 27, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after June 27, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Re-

³ Although the Respondent's answer denies that the Union requested bargaining by letter dated June 16, 1995, a copy of the Union's letter requesting information and dates to begin negotiations is attached to the General Counsel's Motion for Summary Judgment. We find that this letter constituted a request to bargain. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn.4 (1992).

spondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Borden, Inc., Sulphur Springs, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 540, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All production workers, maintenance, vault and warehouse employees employed by Borden, Inc., at its facility located at 500 N. Jackson St., Sulphur Springs, Texas.

EXCLUDED: All supervisors, guards, office clerks, lab employees, and confidential employees as defined in the Act.

(b) Post at its facility in Sulphur Springs, Texas, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 16 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and main-

tained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegations in the complaint regarding the Respondent's refusal to provide information to the Union are remanded to the Regional Director for further appropriate action.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 540 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All production workers, maintenance, vault and warehouse employees employed by Borden, Inc., at its facility located at 500 N. Jackson St., Sulphur Springs, Texas.

EXCLUDED: All supervisors, guards, office clerks, lab employees, and confidential employees as defined in the Act.

BORDEN, INC.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."